FILE COPY

Office - Supreme Court, U.
FILED
NOV 9 1936
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. 175

MARCUS HAUGE,

Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Appellee.

APPLICATION TO PASS CASE AND STIPULATION OF THE PARTIES.

IRWIN T. GILRUTH,
THOMAS C. McCONNELL,
OWEN RALL,
Attorneys for Appellant.

BARNET HODES,
Corporation Counsel,
MARTIN H. FOSS,
Assistant Corporation Counsel,
Attorneys for Appellee.

CHAMPLIN-SHEALY COMPANY, CHICAGO 365

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. 175

MARCUS HAUGE,

Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Appellee.

APPLICATION TO PASS CASE.

MAY IT PLEASE THE COURT:

The appellant, Marcus Hauge, and the appellee, City of Chicago, join in this application and respectfully move the court to pass the above entitled cause to the session of the court beginning Monday, December 7, 1936. In support of their motion they state the following:

On, to-wit, October 12, 1936, this court entered its order postponing further consideration of the question of its jurisdiction and of the motion of appellee to dismiss or

affirm to the hearing upon the merits. Until this order was entered it was not possible to order printing of the record in this case.

The Clerk of this court has informed counsel that the case will probably be reached for oral argument during the week of November 16, 1936.

The printed record was not received by counsel until November 2, 1936.

Because the printed record was not sooner available counsel for appellant have been unable to prepare, serve and file their brief three weeks prior to November 16, 1936. Since Rule 27 of this court provides that the appellant's brief must be filed at least three weeks prior to the date of the oral argument, sufficient time as contemplated by such rule in which to prepare appellant's brief is not provided if the cause is reached for oral argument at the time suggested by the Clerk, and as a consequence counsel for appellee—should the case be heard during the week beginning November 16, 1936—will be deprived of the two weeks' time allowed by said rule for the filing of their brief.

The parties by their counsel therefore respectfully petition the court to enlarge the time within which appellant may file his brief herein to and including November 14, 1936 and the time within which appellee may file its brief herein to and including November 30, 1936, and to postpone the hearing of said cause to a date within the session of the court beginning December 7, 1936.

In support of this application the parties hereto present their stipulation agreeing to the above mentioned enlargement of time and the postponement of the hearing of said cause.

IRWIN T. GILRUTH,
THOMAS C. MCCONNELL,
OWEN RALL,
Attorneys for Appellant.
BARNET HODES,
Corporation Counsel,
MARTIN H. FOSS,
Assistant Corporation Counsel,
Attorneys for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. 175

MARCUS HAUGE,

Appellant,

vs.

CITY OF CHICAGO, a Municipal Corporation,

Appellee.

STIPULATION.

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective counsel, that the time within which appellant is permitted to file his brief herein may be enlarged to and including November 14, 1936, and that the time within which the appellee may file its brief herein may be enlarged to and including November 30, 1936.

It is further stipulated and agreed that the above entitled cause may be passed and be heard within the session of the court beginning December 7, 1936.

IRWIN T. GILRUTH,
THOMAS C. MCCONNELL,
OWEN RALL,
Attorneys for Appellant.
BARNET HODES,
Corporation Counsel,
MARTIN H. FOSS,
Assistant Corporation Counsel,
Attorneys for Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 175.—October Term, 1936.

Marcus Hauge, Appellant,
vs.
The City of Chicago, Appellee.

Appeal from the Supreme Court of the State of Illinois.

[January 4, 1937.]

Mr. Justice McReynolds delivered the opinion of the Court.

Appellant, while residing at Morris, Illinois, engaged in trucking coal for hire from a mine near that place sixty-two miles over public roads to Chicago where he delivered it to consumers. He both owned and drove the truck.

The Revised Statutes of Illinois, (1935) Ch. 24, Art. V, Secs. 54, 55, 56, 91, give cities power to regulate inspection, weighing and measuring of coal, inspection and sealing of weights, measures, etc. Ch. 147 provides for inspecting and sealing scales by State officers; but no law permits designation of State weighmasters.

Chicago by ordinance has authorized the appointment of weighmasters and prescribed their duties. Rev. Code (1931) Secs. 525, 526, 2939, 2947, 2950, 3612, 3623.

Section 2947[1] requires that merchandise "sold in load lots by weight, delivered by wagon, truck or other vehicle within the city,

[1] Section 2947:

"Every load of any commodity, produce or other article or articles of merchandise sold in load lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster; a certificate of weight for each such load, issued by such public weighmaster, shall be delivered by the driver or person in charge of the wagon, truck, or other vehicle used in the delivery, to the purchaser or consignee of such load, or to his or their agent at the time of the delivery and before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle, or such certificates shall be delivered to the inspector of weights and measures, or any of his deputies upon his or their demand. When delivery is made, in case no person is present to receive such commodity, produce or other article or articles of merchandise, and if the purchaser or consignee, or his or their agent, cannot be located, then the memorandum or certificate of weight hereinbefore provided for shall be posted conspicuously at the place of delivery before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle."

shall be weighed by a public weighmaster" and that his certificate showing weights shall be delivered to the purchaser or consignee. Section 3612 permits appointment, as weighmaster, of any one owning scales under prescribed conditions; and Section 3621[2] fixes permissible charges. Section 3623[3] directs: "In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein . . ."

The Chicago Municipal Court adjudged appellant guilty of violating Section 2947 by delivering coal trucked directly from the mine at Morris to a consumer in Chicago without having obtained a weighmaster's certificate showing the gross, tare, and net weights. The coal had been weighed at the mine upon scales duly tested by the State. He claimed the ordinance, as applied to his business, unreasonably required rehandling of coal already properly weighed and therefore offended the Fourteenth Amendment.

The Supreme Court of Illinois affirmed the judgment of conviction. It upheld the view that under Secs. 2947 and 3623 coal brought by truck directly from the mine to the consumer in Chicago, although weighed at the mine on State tested scales, must be unloaded within the city, in order to permit a public weighmaster there to weigh the empty truck, and then reloaded so that both truck and load may be weighed by the same official. The prescribed certificate can issue only after such double weighing.

The Court declared that so construed the ordinance did not conflict with the Fourteenth Amendment and that ruling is the basis for the only question presented for our determination. Violation of the ordinance as written is admitted. Also that it is not unreasonable as applied to dealers operating coal yards within Chicago.

---

[2] Section 3621:

"Public weighmasters, when not the owners or sellers of the articles, commodities or produce weighed by them, shall be entitled to charge and receive a sum not in excess of twenty-five cents for each and every load or part of load (or lesser quantity when not contained in any wagon, truck or other vehicle), of any commodity, produce, article or articles of merchandise weighed by them over the scales of such public weighmasters."

[3] Sec. 3623:

"Each public weighmaster shall issue a weight certificate, signed by him or his deputy, under his official seal, which certificate shall state thereon the following: The commodity, produce, article or articles weighed; the date; the name of the weighmaster or deputy weighmaster who did the weighing; the name and address of the person, firm or corporation for whom the weighing

Counsel maintain that appellant's business differs materially from the business of those who operate local coal yards; that the questioned ordinance is unreasonable in requiring coal weighed upon State inspected scales to be unloaded and reweighed before delivery, since weights could be adequately verified by practical methods not involving this expensive and burdensome proceeding; also that the ordinance unduly discriminates between those who truck coal directly from the mine and dealers with yards within the city.

In *City of Chicago* v. *Wisconsin Lime Co.*, (1924) 312 Ill. 520, the Supreme Court affirmed the power of Chicago to enact the challenged ordinance and pointed out that it "was designed to protect the purchasing public against what has been universally regarded as a widespread evil in the selling of commodities in load lots by weight and it contained effective means for the prevention of the evil."

Below, that Court said: "The opportunity to defraud the consumer in the sale of coal in load lots is great and the consumer has no adequate way to protect himself against being cheated. The delivery of true weights of coal to the consumer is a matter clearly related to the public welfare and the city has the right to adopt reasonable ordinances therefor." "The defendants, non-residents

was done; the name of the driver of the vehicle bringing such commodity, produce, article or articles to the scales, or, if the same is not contained in a vehicle, the name and address of the person bringing the same to the scales; where contained in a vehicle, the kind of vehicle and the name and address of the purchaser or consignee of the commodity weighed; when the commodity is loaded in a vehicle, the total or gross weight of the commodity weighed and the conveyance in which it is loaded, together with the driver and any other person who may be on the vehicle when weighed, and of the horses, if a horse-drawn vehicle and the horses are weighed; the tare weight or the weight of the vehicle, including driver and any other person who may have been on the vehicle when weighed while loading and including the horses if they were weighed when the loaded vehicle was weighed; the net weight of the commodity, produce, article or articles contained in such vehicle, or the net weight of the commodity, produce, article or articles when not contained in a vehicle at the time of weighing. In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein; provided, however, that in the case of a divided load, by which is meant a load containing more than one order for the same or different purchasers or consignees, no penalty shall be imposed under this chapter by reason of the fact that the tare weight shown on the weight certificates is only the original tare weight of the vehicle and equipment before loading if in such case each order has been weighed separately and the net weight of each separate order or delivery is correctly shown on the weight certificate and such correct net weight is delivered."

of the city of Chicago, are asking for a practice of weighing, as applied to the business done by them in the city, which under the ordinance here would not apply to those truckers living in the city and delivering coal from the local yards or local dealers in the city to the consumer." "Where a city has enacted an ordinance within its charter or granted powers regulating a business, the non-residents who desire to follow such business within such municipality must conform to the requirements of the ordinance."

For many years, by admission, Chicago has rightly required local truckmen to comply with the ordinance. Since the evil to be prevented is no less imminent when coal comes by truck from without the city, a like requirement as to this seems equally important. The ordinance makes no discrimination of which appellant can complain; and no adequate reason has been suggested for concluding that although valid as to local truckers it violates rights guaranteed to him by the Fourteenth Amendment.

That the coal delivered by appellant was weighed at the mine on tested scales is stressed; but this is not really material. Chicago had no control there and such weighing afforded no adequate protection against fraud. The opportunities for manipulation thereafter are obvious. Invalidity of the ordinance cannot be established by suggesting some other less burdensome procedure, which possibly might accomplish the end in view—honest delivery weights. The city may act with proper legislative discretion. Here there is nothing to show action so arbitrary, unreasonable or discriminatory as to require us to overthrow its deliberate effort to meet a plain evil. *Rast* v. *Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Armour & Co.* v. *North Dakota*, 240 U. S. 510, 513, 515; *Nashville, C. & St. L. R. Co.* v. *Walters*, 294 U. S. 405, 415.

The challenged judgment must be affirmed

Affirmed.